

CAUSE NO. 493-01133-2023

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**KAYLA WALKER and ROBERT PORTER §
as Next Friends and Parents of S.P., a Minor §
Child, ASHLEY LITTLE as Next Friend §
and Parent of H.L, A.L., AND L.L., Minor §
Children, JILL MCDONALD as Next §
Friend and Parent of D.M. and A.M., Minor §
Children, SHAVON and TYRONE WALL §
as Next Friends and Parents of G.W., a §
Minor Child, ANGELA JORREY as Next §
Friend and Parent of E.J. and O.J., Minor §
Children, ANN PERMENTER as Next §
Friend and Parent of A.P., a Minor Child, §
JARED SHIRLEY as Next Friend and §
Parent of K.S., a Minor Child, LINDSEY §
and MICHAEL PEFFERS as Next Friends §
and Parents of J.P., a Minor Child, JOSE §
SANCHEZ as Next Friend and Parent of §
D.S., a Minor Child, and DAWN SCOTT, §
as Next Friend and Parent of B.S., a Minor §
Child, §**

Plaintiffs

v.

**DURHAM SCHOOL SERVICES, L.P.
and ISABEL GARCIA,**

Defendants

DISTRICT COURT OF

COLLIN COUNTY, TEXAS

PLAINTIFFS' FOURTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Kayla Walker and Robert Porter, as next friends and parents of S.P., a minor child, Ashley Little as next friend and parent of H.L., A.L., and L.L., minor children, Jill McDonald as next friend and parent of D.M. and A.M., minor children, Shavon and Tyrone Wall as next friends and parents of G.W., a minor child, Angela Jorrey as next friend and parent of E.J. and O.J., minor children, Ann Permenter as next friend and parent of A.P., a minor child, Jared Shirley

as next friend and parent of K.S., a minor child, Lindsey and Michael Peffers as next friends and parents of J.P., a minor child, Jose Sanchez as next friend and parent of D.S., a minor child, and Dawn Scott as next friend and parent of B.S., a minor child, (collectively, "Plaintiffs") file this Amended Petition against Durham School Services, L.P., a limited partnership, and Isabel Garcia, an individual, Plaintiffs respectfully allege as follows:

I.
DISCOVERY CONTROL PLAN

1.1 Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs respectfully request that discovery in this case be conducted under Level 3, by further order of this Court, as set forth in Texas Rule of Civil Procedure 190.4.

II.
PARTIES

2.1 Plaintiffs are minor children and individuals residing in Collin County, Texas. They bring this suit through their respective next friends and parents.

2.2 Defendant Durham School Services, L.P., is a Limited Partnership, formed in Delaware. It is headquartered in Lisle, Illinois. Upon information and belief, its principal place of business in the State of Texas is Wolfforth, Lubbock County, Texas. It may be served with process by and through its registered agent, CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

2.3 Defendant Isabel Garcia is an individual and resident of the state of Texas. She can be served with process at her last known address of 1300 Redbud Boulevard, Apartment 159, McKinney, Texas 75069, or wherever she may be found.

III.
JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this matter because the amount in controversy exceeds the jurisdictional minimum of this Court, exclusive of costs and interest, and because the Defendants are residents of the State of Texas.

3.2 Venue is also proper in Collin County under section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events giving rise to this litigation occurred within Collin County, Texas.

3.3 Venue is also proper in Collin County, Texas pursuant to Texas Civil Practice and Remedies Code § 101.102, which states in part that, “A suit under this chapter shall be brought in state court in the county in which the cause of action or a part of the cause of action arises.” Such county is Collin County, Texas.

3.4 Pursuant to Texas Rule and Civil Procedure 54, all conditions precedent have been performed or have occurred.

IV.
FACTS

4.1 Upon information and belief, McKinney ISD had a contractual relationship with Durham School Services, L.P. (“Durham”) as of February 28, 2023, to provide bussing services for students who attend McKinney ISD schools.

4.2 This case arises from an incident that occurred on a Durham school bus, operated by a Durham employee, agent, or independent contractor on the afternoon of February 28, 2023.

4.3 After McClure Elementary School concluded classes for the day on February 28, 2023, students were released to their respective buses. Upon information and belief, temperatures that day peaked at, or around, the time children were on the bus, at 82 degrees Fahrenheit¹.

4.4 Defendant Garcia is believed to have been within the course and scope of employment with Defendant Durham while operating the bus on route 159. During the bus ride, Defendant Garcia diverted from her route for unknown reasons. Rather than remaining in McKinney and returning the children safely home from school, Defendant Garcia drove the bus to Allen, Texas.

4.5 During the drive, and upon information and belief, Defendant Garcia caused the bus to reach unsafe heat levels. As a result of the heat, the children on bus route 159 suffered heat rashes, hives, vomiting, and excessive sweating, among other heat-related injuries. The children were additionally traumatized, fearing that they had been kidnapped. They have understandably suffered mental anguish and psychological injuries due to the incident, in addition to the physical heat-related injuries.

4.6 Finally, upon information and belief, communication systems broke down between Durham and Defendant Garcia after she diverted the bus from its scheduled route. The cause for this breakdown in communications is believed by Plaintiffs to be either a technological defect in Durham's equipment or the intentional act of Defendant Garcia. The disruption in communication further compounded the fear and mental anguish experienced by the children on route 159.

4.7 Plaintiffs further allege that Defendant Durham failed to act as a reasonably prudent transportation system in a number of ways, including but not limited to: negligent hiring, negligent training, negligent retention, and negligent supervision of Defendant Garcia, negligent entrustment

¹ <https://www.wunderground.com/history/daily/us/tx/mckinney/KTKI/date/2023-2-28>

of its vehicle to Defendant Garcia, and general negligence in maintaining its communication systems as well as its response to the above-referenced facts.

4.8 Finally, Plaintiffs allege that Defendant Garcia was negligent in deviating from her route, causing the bus to reach unsafe temperatures, and jeopardizing the physical and mental health of the children on bus route 159.

V. FALSE IMPRISONMENT

5.1 Plaintiffs reallege the allegations contained above, inclusive, and incorporate the same by reference herein. Defendant Isabel Garcia, with the authority given to her by Defendant Durham, willfully detained the students on bus 159. The students were detained on the bus and taken on a route to which they and their parents did not consent. Detention of the students and taking them on the route Defendant Garcia chose was done without parental consent and without authority of law. Plaintiffs have suffered damages as a result of the fear, anxiety, and trauma caused by this incident.

VI. NEGLIGENCE

6.1 Plaintiffs reallege the allegations contained above, inclusive, and incorporate the same by reference herein. Defendant Durham and Defendant Isabel Garcia owed a duty to exercise reasonable care in the safe transportation of the children on bus route 159 from school to the children's respective homes.

6.2 Defendant Durham breached its duty of care by failing to act as a reasonably prudent school transportation company by failing to maintain its bus, including but not limited to the bus communication system(s). It further breached its duty of care by failing to call law enforcement agencies when presented with an emergency situation. Finally, it breached its duty of

care by failing to properly monitor the temperature and conditions experienced by the children riding on its bus or to ensure their safety while being transported by its driver on a Durham-owned school bus. Plaintiffs' injuries and damages were proximately caused by Defendant Durham's breach of its duty of care.

6.3 Finally, Defendant Isabel Garcia breached her duty of care by failing to act as a reasonably prudent bus driver transporting children from school to their homes. Ms. Garcia's care of the children on route 159 fell far below reasonable standards. Specifically, Ms. Garcia breached her duty of care by failing to follow the route provided to her, whether intentionally or negligently, unnecessarily frightening students, ignoring students' suggestions that she was not on the correct route, and by causing the temperature on the bus to reach unsafe conditions for students. Finally, Defendant Garcia's conduct toward students entrusted into her care fell below reasonable standards. Plaintiffs' injuries and damages were proximately caused by Defendant Ms. Garcia's breach of her duty of care.

VII. NEGLIGENT ENTRUSTMENT

7.1 Plaintiffs reallege the allegations contained above, inclusive, and incorporate the same by reference herein.

7.2 The occurrence made the basis of this suit, as referred above, and the resulting damages were proximately caused by the negligent conduct of Defendant Ms. Garcia, acting in the course and scope of employment and on behalf of Defendant Durham. On the occasion in question:

- a. Upon information and belief, Defendant Durham was the owner of the school bus operated by Defendant Ms. Garcia on the date of the incident;
- b. Upon information and belief, Defendant Durham entrusted its school bus to

- Defendant Ms. Garcia, as a reckless or incompetent driver;
- c. Plaintiffs allege that Defendant Durham was negligent on the date of the incident;
 - d. Plaintiffs further allege that Defendant Ms. Garcia was negligent on the date of the incident; and
 - e. Defendant Durham and Defendant Ms. Garcia's negligence was the proximate cause of Plaintiffs' injuries and damages.

**VIII.
VICARIOUS LIABILITY/ RESPONDEAT SUPERIOR**

8.1 Plaintiffs reallege the allegations contained above, inclusive, and incorporate the same by reference herein. Defendant Durham is responsible for the actions of its employee under the doctrine of *respondeat superior*. Plaintiffs were injured due to the negligence of Durham's employee or agent. Upon information and belief, Ms. Garcia was a Durham employee or agent acting in the course and scope of employment when the above-described acts and omissions were committed.

**IX.
NEGLIGENT HIRING, SUPERVISION, RETENTION, AND TRAINING**

9.1 Plaintiffs reallege the allegations contained above, inclusive, and incorporate the same by reference herein.

9.2 *Negligent Hiring.* Defendant Durham had a duty to hire competent employees, specifically bus drivers. Upon information and belief, Defendant Durham breached that duty by hiring Defendant Ms. Garcia, due to inadequate screening measures and/or because Defendant Ms. Garcia was an incompetent or unqualified driver. Upon information and belief, Defendant Durham's failure to perform adequate pre-employment screening measures and hiring practices

and/or its hiring of an incompetent or unqualified driver proximately caused Plaintiffs' injuries. Furthermore, Plaintiffs' injuries are a harm of the type for which the law permits recovery.

9.3 *Negligent Training.* Defendant Durham had a duty to train competent employees. Upon information and belief, Defendant Durham breached that duty by failing to train, or by inadequately training Defendant Ms. Garcia. Upon information and belief, Defendant Durham's training practices as they relate to Ms. Garcia fell below the standard that a reasonably prudent school transportation company and reasonably prudent school district would have maintained, respectively. Upon information and belief, this breach of Defendant Durham's duty to train competent employees proximately caused Plaintiffs' injuries and damages.

9.4 *Negligent Supervision.* Defendant Durham had a duty to supervise its employees. Upon information and belief, Defendant Durham breached that duty by failing to supervise, or by inadequately supervising Defendant Ms. Garcia. Upon information and belief, Defendant Durham's supervision as it related to Ms. Garcia fell below the standard that a reasonably prudent school transportation company or school district would have maintained. Upon information and belief, this breach of Defendant Durham's duty to supervise Defendant Ms. Garcia proximately caused Plaintiffs' injuries and damages.

9.5 *Negligent Retention.* Defendant Durham had a duty to retain competent employees. Upon information and belief, Defendant Durham. breached that duty by retaining Defendant Ms. Garcia, an incompetent and/or unqualified driver. Upon information and belief, Defendant Durham's retention practices, as they relate to Defendant Ms. Garcia, fell below the standard that a reasonably prudent school transportation company or school district would have maintained. Upon information and belief, this breach of Defendant Durham's duty to retain competent employees proximately caused Plaintiffs' injuries and damages.

X.
DAMAGES

10.1 As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff S.P., a minor child, Plaintiff H.L., a minor child, Plaintiff A.L., a minor child, Plaintiff L.L., a minor child, Plaintiff D.M., a minor child, Plaintiff A.M., a minor child, Plaintiff G.W., a minor child, Plaintiff E.J., a minor child, Plaintiff O.J., a minor child, Plaintiff A.P., a minor child, Plaintiff K.S., a minor child, Plaintiff J.P., a minor child, Plaintiff D.S., a minor child, and Plaintiff B.S., a minor child, have each individually and separately incurred the following damages:

- a. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of Plaintiff's injuries, including but not limited to mental health injuries, resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services;
- b. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- c. Physical pain and suffering, experienced in the past and that, in all reasonable probability, will be experienced in the future; and
- d. Mental anguish experienced in the past and that, in all reasonable probability, will be experienced in the future.

10.2 Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek monetary relief greater than \$1,000,000.

10.3 By the reasons stated above, Plaintiffs have suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

**XI.
JURY DEMAND**

11.1 Plaintiffs request their right to a jury trial afforded by the Texas Constitution and the United States Constitution. Plaintiffs have tendered, or will tender, the requisite fee to the District Clerk.

**XII.
PRAYER**

12.1 WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiffs may show themselves to be entitled by law or in equity.

Respectfully submitted,

/s/ Kim Jones Penepacker
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Kamryn Post on behalf of Kimberly Jones Penepacker
Bar No. 24101976
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Envelope ID: 81756980
Filing Code Description: Amended Filing
Filing Description: Plaintiffs' Fourth Amended Petition
Status as of 11/17/2023 11:42 AM CST

Associated Case Party: Kayla Walker

Name	BarNumber	Email	TimestampSubmitted	Status
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Gillianne Mercy		gillianne@thetexaslawdog.com	11/17/2023 11:32:49 AM	SENT

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Kamryn Post on behalf of Kimberly Jones Penepacker
Bar No. 24101976
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Envelope ID: 81756980
Filing Code Description: Amended Filing
Filing Description: Plaintiffs' Fourth Amended Petition
Status as of 11/17/2023 11:42 AM CST

Case Contacts

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